

ELLEN F. ROSENBLUM
Attorney General
SHEILA H. POTTER #993485
Deputy Chief Trial Counsel
ANNA M. JOYCE #013112
Solicitor General
MARY WILLIAMS #911241
Special Assistant Attorney General
Department of Justice
1515 SW Fifth Ave, Suite 410
Portland, OR 97201
Telephone: (971) 673-1880
Fax: (971) 673-5000
Email: Sheila.Potter@doj.state.or.us
anna.joyce@doj.state.or.us
mary_h_williams@msn.com

Attorneys for State Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

**DEANNA L. GEIGER and JANINE M.
NELSON; ROBERT DUEHMIG and
WILLIAM GRIESAR,**

Plaintiffs,

v.

JOHN KITZHABER, in his official capacity
as Governor of Oregon; **ELLEN
ROSENBLUM**, in her official capacity as
Attorney General of Oregon; **JENNIFER
WOODWARD**, in her official capacity as
State Registrar, Center for Health Statistics,
Oregon Health Authority; and **RANDY
WALDRUFF**, in his official capacity as
Multnomah County Assessor,

Defendants.

Case No. 6:13-cv-01834-MC
(Lead Case)

DECLARATION OF SHEILA H. POTTER IN
SUPPORT OF STATE AND COUNTY
DEFENDANTS' RESPONSE TO PETITION
FOR ATTORNEY FEES AND NOTICE OF
PROPOSED AGREEMENT ON FEES

PAUL RUMMELL and BENJAMIN WEST; LISA CHICKADONZ and CHRISTINE TANNER; BASIC RIGHTS EDUCATION FUND,

Plaintiffs,

v.

JOHN KITZHABER, in his official capacity as Governor of Oregon; **ELLEN ROSENBLUM**, in her official capacity as Attorney General of Oregon; **JENNIFER WOODWARD**, in her official capacity as State Registrar, Center for Health Statistics, Oregon Health Authority; and **RANDY WALDRUFF**, in his official capacity as Multnomah County Assessor,

Defendants.

Case No. 6:13-cv-02256-TC

I, Sheila H. Potter, declare:

1. I am one of the attorneys for state defendants John Kitzhaber, Ellen Rosenblum, and Jennifer Woodward. I make the following statements of my own knowledge.

2. I have conferred with attorneys Lake Perriguet and Lea Ann Easton about their attorney fee petition. In the course of those conferrals, the attorneys reached an agreement on the payment of a negotiated amount of attorney fees that is lower than the total sought in the petition but still reflects the work and skill that went into the Geiger plaintiffs' case. We nonetheless recognize that the Court has an independent duty to review the petition for reasonableness and do not wish to intrude on the Court's authority. We agreed to submit our agreement to the Court for its review.

3. I reviewed each entry in each attorney fee statement submitted by Mr. Perriguet, Ms. Easton, and Sage Teton, along with the memorandum, the declarations, and the attorney fee surveys submitted in support of the petition.

4. I then approached Mr. Perriguet with a proposal to reach an amicable resolution on fees. Mr. Perriguet provided me with the spreadsheet reflecting his hours, with a corrected total of 285.6 hours. He then agreed that, in this case, he would reduce his requested rate to \$350 per hour, which is closer to the OSB survey used by this Court but reflective of the unusual nature of the constitutional challenge that plaintiffs' counsel took on, while taking into account the defendants' position on the central question. Mr. Perriguet also agreed to an additional reduction of the resulting total by twenty-five percent (25%). He asked that the record reflect that he was doing so "in recognition of the Oregon taxpayers who did not vote for Measure 36." If one calculates 285.6 hours at \$350/hour, less the discount of 25 percent, it would result in \$74,970. The state defendants and the counsel for the Geiger plaintiffs accordingly agreed on a flat fee payment of \$75,000 to Mr. Perriguet, subject to this Court's approval.

5. Ms. Easton reduced her billings by a substantial margin before submitting the fee petition. Ms. Easton's long experience and the nature of the case would have supported a \$400/hour rate, under the OSB survey – but Ms. Easton chose in this case to ask for only \$300/hour, effectively volunteering for the same 25-percent discount that Mr. Perriguet has now agreed to. Her decision to do so is consistent with the collegiality and professionalism that has characterized her litigation style throughout the case. Ms. Easton also voluntarily marked a number of entries as "NO CHARGE," before even submitting the petition; again, this is appreciated. I did not believe it appropriate to ask Ms. Easton to reduce her fees even more dramatically than she has already done voluntarily. Her resulting request for \$51,390 is reasonable to the defendants, and I have advised Mr. Perriguet and Ms. Easton that we would agree to pay it in full, subject to the Court's review.

6. Ms. Teton's request for a total of \$6,300 is minimal. Her requested rate is eminently reasonable for her experience, and her time entries reflect no work that the defendants would dispute. The defendants agreed to pay her requested fees in full as well, again subject to the Court's approval.

7. I see no basis to dispute the costs sought (mileage to Eugene by the lead attorneys only, for hearings that were reasonable for them to attend, as well as the initial filing fee) and have agreed that the requested \$967.50 is reasonable.

8. The state defendants agreed at the start of the case that they would not seek contribution from Multnomah County in any payment of fees under 28 U.S.C. § 1988, given that the challenged laws were state laws. Consistent with our agreement, I have been advised by the Geiger plaintiffs' counsel and county counsel that plaintiffs would not seek fees from Multnomah County. The state defendants intend to pay the fees awarded to the Geiger plaintiffs by this Court.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on July 18, 2014.

s/ Sheila H. Potter
SHEILA H. POTTER
Deputy Chief Trial Counsel